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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,787	07/03/2003	Kishen Gohil	J-3863	6997
27389	7590	11/23/2005	EXAMINER	
NORRIS, MC LAUGHLIN & MARCUS			SHAFFNER, FRANK C	
875 THIRD AVE			ART UNIT	PAPER NUMBER
18TH FLOOR			1744	
NEW YORK, NY 10022				

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/613,787	GOHIL, KISHEN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Frank Shaffner	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 July 2003.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-16 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 03 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                                       |                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                           | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                                  | Paper No(s)/Mail Date. _____                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>January 21, 2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|                                                                                                                                                       | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 and 4-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The intended use statement in claim 1, "adapted to receive a member associated with the dispenser.", is not given patentable weight because a member and dispenser are not positively claimed as structural elements of the wick.

Claims 1 and 6 recite the limitation "the dispenser". There is insufficient antecedent basis for this limitation in the claims.

Claims 4-15 are indefinite because they fail to properly further limit the claim from which they depend. Since a member is not positively recited with the body in claim 1, a member cannot be further limited in claims 4-15.

Claim 6 is also indefinite because it fails to properly further limit the claim from which it depends. Since a dispenser is not positively recited with the body in claim 1, a dispenser cannot be further limited in claims 4-15.

Claim 9 is also indefinite because it is unclear if "a wick" is the same wick recited in claims 1-9. Also, it is unclear from "the other opening" on line 23 and "the opening" on line 24 as to which opening the applicant is referring.

Claims 11-14 are also indefinite because it is unclear from “the other opening” as to which opening the applicant is referring.

Claim 16 is indefinite by failing to properly further limit the claim from which it depends because it merely recites a method step which fails to further limit the structure claimed in the apparatus claim.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Based on the examiner’s best interpretation of the applicant’s claims:

4. Claims 1-5, 7-10, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Babasade.

Regarding claim 1, in U.S. Patent 5,230,837, Babasade teaches a wick for a dispenser for volatile liquid with a body defining an opening in which the opening is adapted to receive a member associated with the dispenser (elements 68, 80 of Fig. 5, Fig. 6).

Regarding claim 2, Babasade also teaches that the opening is positioned in a top of the wick (elements 68, 80 of Fig. 5, Fig. 6).

In regard to claim 3, Babasade teaches that the opening is positioned in a side of the wick (Fig. 5, column 5 lines 64-68). Here, the “opening” is interpreted by its plain meaning referring to a gap as taught by Webster in Webster’s New World College Dictionary 4<sup>th</sup> ed., 2000.

Regarding claim 4, Babasade teaches a shape of the opening (element 68, Fig. 5) is congruent with a shape of the member (element 74, Fig. 5).

In regard to claim 5, Babasade teaches that a size of the opening is of a dimension larger than a size of the member (Fig. 5). This allows member 74 to be inserted into wick 64 resulting in Fig. 6.

Regarding claim 7, Babasade teaches that the body is elongate and has a length in which the member engages the opening in a direction generally along the length of the body (Fig. 5). Length is interpreted here to be the vertical height of wick 64.

In regard to claim 8, Babasade also teaches that the body is elongate and has a length in which the member engages the opening in a direction generally transverse to the length of the body (Fig. 6). Length is interpreted here to be the horizontal width of wick 75.

In regard to claims 9 and 10, Babasade teaches a housing defining another opening adapted to receive a wick through the other opening and into an interior of the housing in which the opening has a dimension H; and in which the member has a dimension P in which P is less than H (column 5 lines 51-55, Fig. 5, Fig. 7). The width of member 74 is smaller than the dimension H of the housing, which allows the wick to be inserted into the housing.

In regard to claim 15, Babasade also teaches that a perimeter of a cross section of the member taken generally transverse to a length of the member has a simple geometric shape (element 74, Fig. 5). Here, the simple geometric shape is a circle.

Regarding claim 16, Babasade teaches that the wick operates at ambient room temperature (see Abstract).

As each and every element of claims 1-5, 7-10, 15, and 16 of the claimed invention is taught by Babasade above, the claims are anticipated by Babasade.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Based on the examiner's best interpretation of the applicant's claims:

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Babasade in view of Bryan.

Babasade teaches all the essential elements of the claimed invention as stated above and in addition, Babasade teaches that the member is affixed to the dispenser (Fig. 5, Fig. 7, column 6 lines 1-6). However, Babasade fails to teach that the dispenser includes a fan in which the body is aligned with the fan with the member received in the opening.

In U.S. Patent 1,962,100, Bryan teaches a vapor projector utilizing a fan to project fragrant vapors into ambient air wherein the wick is aligned with the fan (Fig. 1, Fig. 2). Additionally, Bryan teaches that a fan would create natural suction by drawing air from the atmosphere through the wick thereby optimizing the rate of evaporation of fragrance (column 2 lines 35-38).

Therefore, regarding the teachings of Babasade in view Bryan, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the fan taught by Bryan in Babasade's wick apparatus by aligning the fan with the wick so the wick

Art Unit: 1744

resides in the air stream generated by the fan. In addition to a Babasade's rotating fragrance wheel, the rotating fan would draw air from the atmosphere through the wick thereby optimizing the rate of evaporation of fragrance taught by Bryan in column 2 lines 35-38.

7. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Babasade in view of Rooth.

Regarding claim 11, Babasade teaches all the essential elements of the claimed invention as stated above and in addition, teaches in Fig. 7 that the member is affixed to an interior surface of the housing (holder 44 of Fig. 5). However, Babasade fails to teach that the member is opposite the other opening defined by the housing.

In U.S. Patent 2,246,008, Rooth teaches a wick diffuser for a volatile liquid in which the liquid dispenser and wick can be removed from the top of the apparatus by opening lid 12 (Fig. 8, page 3 column 1 lines 14-22).

Therefore, regarding the teachings of Babasade in view of Rooth, it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the housing of Babasade's invention with the removable top of Rooth's invention in order for easy wick removal as taught by Rooth on page 3 column 1 lines 14-22 which would result in the functional equivalent structure for wick replacement. The removable top would provide an opening defined by the housing opposite to where the member is affixed.

Regarding claim 12, Babasade in view of Rooth teach all the essential elements of the claimed invention as stated above and in addition, Babasade teaches in Fig. 7 that the member extends from the interior surface toward the other opening defined by the housing. Here, the member is snap connected to motor shaft 26 (Babasade column 6 lines 30-36).

In regard to claim 13, Babasade in view of Rooth teach all the essential elements of the claimed invention as stated above and in addition, Babasade teaches in Fig. 7 that the member extends from the interior surface of the housing to proximate the other opening defined by the housing. Here, the term “proximate” is interpreted as meaning “near”.

Regarding claim 14, Babasade in view of Rooth teach all the essential elements of the claimed invention as stated above and in addition, Babasade teaches in Fig. 7 that the member 74 extends in a direction generally transverse to a direction of insertion of the wick into the other opening of the housing. Here, the “other opening” refers to the opening covered by removable panel 54.

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

In U.S. Patent 4,913,350, Purzycki discloses a wick used to expel a volatile fragrance from a reservoir into ambient air.

In U.S. Patent 2004/0182949 A1, Duston et al. disclose a container for dispensing a volatile substance into ambient air by means of a liquid absorbing wick. The container is adapted to be held within the housing of a dispensing device.

Art Unit: 1744

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Shaffner whose telephone number is (571) 272-5568. The examiner can normally be reached on Monday through Friday, 7:30 AM until 4:30 PM.

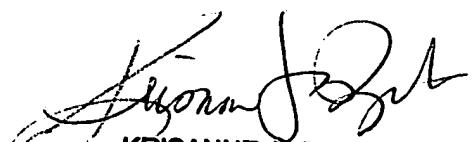
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached at (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

F.S.

F.S.

November 16, 2005



KRISANNE JASTRZAB  
PRIMARY EXAMINER